

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WALTER STIMAX)	
Claimant)	
VS.)	
)	Docket No. 265,773
L.E. BARNES CIRCUS, INC.)	
Respondent)	
AND)	
)	
NATIONAL AMERICAN INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appealed the March 5, 2002 preliminary hearing Order and the March 11, 2002 Order Nunc Pro Tunc entered by Administrative Law Judge Jon L. Frobish.

Issues

This is a claim for a March 15, 2001 accident while claimant was working for a circus in the State of Florida.

This is the third appeal from a preliminary hearing Order in this claim. The issue decided in the first appeal was whether claimant's contract of employment with respondent was made in the State of Kansas. In its Order dated November 15, 2001, the Board determined that it was and, accordingly, the Kansas Division of Workers Compensation had jurisdiction over this claim. The Board remanded this claim to Judge Frobish to address the remaining preliminary hearing issues. By an Order dated November 16, 2001, the Judge again denied claimant's request for preliminary benefits finding claimant failed to prove that he provided respondent with proper notice of the alleged accident and, in addition, failed to prove that his brain hemorrhage was caused by the accident. In its

second Order, which was entered on January 28, 2002, the Board again reversed and remanded the matter to the Judge for further orders on claimant's requests for medical and temporary total disability compensation. In the March 5, 2002, Order which is the subject of this third appeal, Judge Frobish considered additional (new) evidence and determined that claimant had proven he sustained personal injury by accident on March 15, 2001, and that the accidental injury arose out of and in the course of claimant's employment with respondent. The Judge further determined that respondent was given proper notice of that accident. But benefits other than medical treatment for the hip injury were again denied because the Judge found the hemorrhage of the AV fistula was not causally related to the claimant's fall on March 15, 2001.

Claimant contends Judge Frobish erred and filed this appeal. In claimant's April 8, 2002 brief to the Board, the issues for review are described as follows:

(a) whether the Court abused its discretion by considering as part of the record documents which were not offered as exhibits at the hearing; (b) whether the Court had jurisdiction to reconsider and, in effect, reverse the Board's determination of compensability; (c) payment of medical compensation and temporary total disability benefits in accord with the Board's Order; and finally, (d) in the event the Board finds Judge Frobish had authority to consider this matter a second time and accept unoffered exhibits, whether his ruling is supported by the evidence.

Findings of Fact

After reviewing the record compiled to date, the Board finds that Judge Frobish's March 5, 2002 Order and March 11, 2002 Order Nunc Pro Tunc should be affirmed. The Judge did not abuse his discretion nor exceed his jurisdiction by conducting another preliminary hearing and receiving new evidence before issuing an Order on remand. The Board agrees with the Judge that claimant has proven a work related accident and injury as well as timely notice. But based in part upon that new evidence, the Board further finds that the greater weight of the medical evidence does not support claimant's contention that his March 15, 2001 fall included a significant trauma to his head that aggravated, accelerated or contributed to the intra-cranial hemorrhage of his AV fistula, a congenital malformation.

WHEREFORE, the Board affirms the March 5, 2002 preliminary hearing Order and the March 11, 2002 Order Nunc Pro Tunc entered by Administrative Law Judge Jon L. Frobish.

IT IS SO ORDERED.

Dated this _____ day of July 2002.

BOARD MEMBER

c: Orval Mason, Attorney for Claimant
Ronald J. Laskowski, Attorney for Respondent and Insurance Carrier
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Workers Compensation Director